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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding.	91172349
Applicant	Plaintiff Ameritrust Mortgage Company
Other Party	Defendant AmeriFirst Home Improvement Finance Co.

### **Motion for Suspension in View of Civil Proceeding With Consent**

The parties are engaged in a civil action which may have a bearing on this proceeding. Accordingly, Ameritrust Mortgage Company hereby requests suspension of this proceeding pending a final determination of the civil action. Trademark Rule 2.117.

Ameritrust Mortgage Company has secured the express consent of all other parties to this proceeding for the suspension requested herein.

Ameritrust Mortgage Company has provided an e-mail address herewith for itself and for the opposing party so that any order on this motion may be issued electronically by the Board.

### **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Respectfully submitted,

/Matthew S. Solmon/

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10/17/2006

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Application Serial Nos. 78/696,008 and 78/696,009  
For the Marks: **AMERIFIRST** and **AMERIFIRST HOME IMPROVEMENT FINANCE**

Ameriquest Mortgage Company	)	
a Delaware corporation	)	
	)	
Opposer,	)	
vs.	)	
	)	
AmeriFirst Home Improvement Finance Co.	)	
a Virginia corporation	)	
	)	
Applicant.	)	
	)	

Opposition No. 91172349

**MOTION WITH CONSENT TO SUSPEND OPPOSITION FOR CIVIL ACTION**

Pursuant to 37 C.F.R. Section 2.117 and TBMP Section 510.02(a), Opposer, Ameriquest Mortgage Company (“Opposer”), by and through its undersigned counsel, with the consent of Applicant, AmeriFirst Home Improvement Finance Co. (“Applicant”), by and through its undersigned counsel, respectfully request that the Board suspend the above-captioned proceeding pending disposition of a civil action in the United States District Court for the Central District of California, which was filed by Opposer against Applicant on September 6, 2006. This civil action, titled *Ameriquest Mortgage Company v. Amerifirst Home Improvement Finance Co. f/k/a Kenwood Associates, Inc.*, Case No. SACV 06-05616-FMC (FFMx), is referred to hereinafter as the “Civil Action.” Opposer’s Complaint in the Civil Action is attached hereto as **Exhibit “1”** (the “Complaint”).

Both Opposer and Applicant are parties to the Civil Action, which involves common issues of law and fact that may have a bearing on this proceeding. The Civil Action is currently pending and has not been fully litigated or finally determined.

## **BRIEF IN SUPPORT OF MOTION**

As set forth in 37 C.F.R. Section 2.117(a), it provides:

Whenever it shall come to the attention of the Trademark Trial and Appeal Board that a party or parties to a pending case are engaged in a civil action or another Board proceeding which may have a bearing on the case, proceedings before the Board may be suspended until termination of the civil action or the other Board proceeding.

Thus, since the Civil Action filed by Opposer “may have a bearing on” the present opposition proceeding, then the TTAB, in its discretion, may suspend all proceedings in this opposition. Although it is in the discretion of the TTAB to decide whether to suspend the opposition proceeding or not, Section 510.02(a) of the TBMP states, “Ordinarily, the Board will suspend proceedings in the case before it if the final determination of the other proceeding will have a bearing on the issues before the Board.”

In other words, it is the ordinary course of the proceedings to be suspended if the lawsuit “will have a bearing on the issues before the Board”. TBMP Section 510.02(a); *General Motors Corp. v. Cadillac Club Fashions, Inc.*, 22 USPQ 2d 1933, 1938 (TTAB 1992) (suspending proceedings in a cancellation proceeding when a decision by a district court in a lawsuit would “be dispositive of the issues before the Board”). The Board should suspend the proceeding herein because the parties are currently engaged in the Civil Action in the Central District of California that bears directly on the pending proceeding and includes claims that should be dispositive of the issues raised in the pending opposition. See *Whopper-Burger v. Burger King*, 171 USPQ 805; *The Other Telephone Co. v. Connecticut Nat’l Tel. Co.*, 181 USPQ 125; *Tokaido v. Honda Assocs., Inc.*, 179 USPQ 861 (TTAB 1973). The Civil Action involves the issue of whether Applicant’s use of the marks AMERIFIRST and AMERIFIRST HOME IMPROVEMENT FINANCE, identified in and attached as Exhibit “D” and Exhibit “E” to the Complaint, are infringing federal trademarks owned by Opposer, which trademarks are also

being relied upon in the instant Opposition proceeding. As such, the issue of likelihood of consumer confusion is central to the Civil Action. Because of the related nature of the claims in the Civil Action, resolution of the Civil Action will almost certainly have a bearing on the issues in this opposition proceeding, and a decision in the Civil Action will almost certainly resolve the current opposition between Opposer and Applicant. Accordingly, the Board should suspend the pending proceeding until termination of the Civil Action between the parties. The final determination of the Civil Action will have a bearing on the issues before the Board, and thus, this opposition should be stayed to avoid duplicating the effort of the District Court and to eliminate the possibility of reaching an inconsistent conclusion.

Applicant's express consent to this Motion to Suspend is provided hereto by and through Applicant's undersigned counsel.

Wherefore, Opposer, with Applicant's express consent, respectfully prays that the Board enter an order suspending this opposition proceeding currently pending before the Board pending disposition of the Civil Action between the parties that is currently in the United States District Court for the Central District of California.

Respectfully submitted,

BUCHALTER NEMER  
A Professional Corporation

Date: October 17, 2006

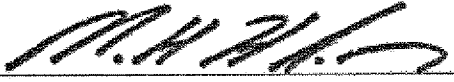
By: \_\_\_\_\_

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CONSENTED TO:

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Attorneys for Applicant  
AmeriFirst Home Improvement Finance Co.

## **EXHIBIT “1”**

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7 Attorneys for Plaintiff  
8 AMERIQUEST MORTGAGE COMPANY

9  
10 UNITED STATES DISTRICT COURT  
11 CENTRAL DISTRICT OF CALIFORNIA

12  
13 AMERIQUEST MORTGAGE  
14 COMPANY, a Delaware  
corporation,

15 Plaintiff,

16 vs.

17 AMERIFIRST HOME  
18 IMPROVEMENT FINANCE CO., a  
Virginia corporation, f/k/a  
19 KENWOOD ASSOCIATES, INC.,

20 Defendant.

Case No.

CV.06 5616

COMPLAINT for:

1. Service Mark Infringement pursuant to the Lanham Act;
2. Dilution pursuant to the Lanham Act;
3. False Designation of Origin pursuant to the Lanham Act;
4. Violation of the Anticybersquatting Consumer Protection Act;
5. Unfair Competition;
6. Service Mark Infringement pursuant to California Law;
7. Dilution pursuant to California Law;
8. Unfair Business Practices pursuant to California Business and Professions Code §17200; and
9. False Advertising pursuant to California Business and Professions Code §17500.

Demand for Jury Trial

1 Plaintiff AMERIQUEST MORTGAGE COMPANY ("Ameriquest") alleges  
2 as follows:

3 **JURISDICTION AND VENUE**

4 1. This action is for, *inter alia*, infringement of Ameriquest's federally  
5 registered service marks in violation of the laws of the United States. This Court  
6 has jurisdiction pursuant to 15 U.S.C. § 1121(a) and 28 U.S.C. §§ 1331 and  
7 1338(a) in that this case arises under the laws of the United States pursuant to the  
8 Lanham Act, 15 U.S.C. §§1051 *et seq.* Further, this Court has jurisdiction  
9 pursuant to 28 U.S.C. § 1332 in that the matter in controversy exceeds the sum or  
10 value of \$75,000, exclusive of interest and costs, and is between citizens of  
11 different states.

12 2. This Court has supplemental jurisdiction over the claims herein  
13 arising under the laws of the State of California pursuant to 28 U.S.C. §§ 1338(b)  
14 and 1367 in that said claims are joined as substantial and related claims under the  
15 laws of the United States pursuant to 15 U.S.C. §§1051 *et seq.*, and these claims  
16 form part of the same case and controversy under Article III of the United States'  
17 Constitution.

18 3. Venue is proper in this District under 28 U.S.C. § 1391(b) in that a  
19 substantial part of the events or omissions giving rise to the claims herein arose in  
20 this District. Additionally, defendant AMERIFIRST HOME IMPROVEMENT  
21 FINANCE CO., a Virginia corporation f/k/a KENWOOD ASSOCIATES, INC.,  
22 ("Defendant") is a corporation registered with the California Secretary of State and  
23 is licensed to conduct and is regularly conducting business in California and, as  
24 such, maintains the requisite minimum contacts to be subject to personal  
25 jurisdiction in California under 28 U.S.C. §1391(c).

26 **PARTIES**

27 4. Ameriquest is a corporation duly organized and existing under the  
28 laws of the State of Delaware and has a principal place of business at 1100 Town  
2



1 and Country Road, 11th Floor, Orange, California 92868. Ameriquest is now, and  
2 for many years has been, engaged in the business of providing mortgage and  
3 financial services throughout the United States.

4 5. Upon information and belief, Defendant is a corporation formed and  
5 existing under the laws of the Commonwealth of Virginia and has a principal place  
6 of business at 4041 Powder Mill Road, Suite 204, Calverton, Maryland 20705  
7 and/or at 4405 South 96th Street, Omaha, Nebraska 68127.

8 6. Ameriquest and Defendant are competitors that offer the same or  
9 similar mortgage and financial services.

### 10 INTRODUCTION

11 7. Ameriquest is one of the largest mortgage lending companies in the  
12 United States. Ameriquest is famous in the industry and, for over a decade, its  
13 name has become synonymous with high quality service to its customers.

14 8. Ameriquest's fame is also attributed, in part, to its extensive, national  
15 marketing practices with advertisements in print media, on television, the Internet  
16 and radio, and also through its sponsorship of stadiums, blimps, and professional  
17 car racing.

18 9. Over the past decade, in addition to its "AMERIQUEST" brand  
19 name, Ameriquest has built a family of services marks around its brand name.

20 10. Because of its fame and recognition in the mortgage lending industry,  
21 Ameriquest takes the necessary steps to protect and enforce its rights in and to its  
22 "AMERIQUEST" brand name and family of service marks.

23 11. Upon information and belief, Defendant conducted business as  
24 Kenwood Associates, Inc. for nearly twenty-five years prior to adopting the term  
25 "Amerifirst" as its corporate name.

26 12. Then, in August 2004, Defendant changed its corporate name from  
27 Kenwood Associates, Inc. to Amerifirst Home Improvement Finance Co.  
28 (Attached hereto as Exhibit A is a true and correct copy of the Articles of

Amendment filed on August 11, 2004 with the Secretary of the Commonwealth of Virginia by Kenwood Associates, Inc. to change its corporate name.)

13. On or about September 8, 2004, Ameriquest discovered Defendant's use of the term "Amerifirst" and sent Defendant a cease and desist letter demanding that Defendant abandon its attempt to register various trademarks containing the term "Amerifirst" and immediately cease all use of "Amerifirst".

14. Defendant, despite Ameriquest's demands, continues to use the term "Amerifirst" in commerce, throughout the United States, on or in connection with mortgage and financial services.

15. Defendant changed its name and adopted the term "Amerifirst" as a mark with the intent to trade on Ameriquest's distinctive, well-known and famous name and marks.

16. Defendant's adoption and use of the name "Amerifirst", which is nearly identical in appearance, sound, connotation and commercial impression to the term "Ameriquest", and Defendant's continued advertising, offering for sale, and selling mortgage and financial services in interstate commerce under the name and designation "Amerifirst" form the underlying basis of this dispute.

### **THE AMERIQUEST SERVICE MARKS**

17. Through extensive and continuous use, Ameriquest owns a family of federally registered service marks used on and in connection with mortgage and financial services as follows:

SERVICE MARK	DATE FILED:	DATE REGISTERED:	FEDERAL NUMBER:	DATE OF FIRST USE:
AMERIQUEST	02/04/2000	03/26/2002	Reg. No. 2,551,713	01/02/1995
AMERIQUEST MORTGAGE COMPANY	02/04/2000	03/26/2002	Reg. No. 2,551,714	01/02/1995
AMERIQUEST MORTGAGE COMPANY & BELL DESIGN	02/04/2000	08/20/2002	Reg. No. 2,608,552	04/08/1997

SERVICE MARK	DATE FILED:	DATE REGISTERED:	FEDERAL NUMBER:	DATE OF FIRST USE:
AMERIQUEST MORTGAGE	09/13/2001	09/17/2002	Reg. No. 2,620,964	01/02/1995
THE AMERIQUEST ADVANTAGE	06/27/2001	07/16/2002	Reg. No. 2,594,233	03/00/2000
AMERIQUEST MORTGAGE INSURANCE SERVICES CORPORATION	11/04/2002	09/09/2003	Reg. No. 2,761,480	05/26/1998
AMERIQUEST CAPITAL CORPORATION	11/13/2002	04/13/2004	Reg. No. 2,831,454	04/08/1997
AMERIQUEST MORTGAGE COMPANY	09/26/2003	12/14/2004	Reg. No. 2,909,941	06/16/2003
AMERIQUEST FINANCIAL	06/19/2002	08/22/2006	Reg. No. 3,133,395	03/01/2006
AMERIQUEST REWARDS	04/30/2004	05/16/2006	Reg. No. 3,093,662	07/01/2004
AMERIQUEST & BELL DESIGN	07/16/2004	08/29/2006	Reg. No. 3,136,296	04/26/2004

These marks identified above are hereinafter collectively referred to as the "AMERIQUEST MARKS".

18. Ameriqurest's registrations identified in paragraph 17, above, are valid and subsisting.

#### **AMERIQUEST'S USE OF ITS SERVICE MARKS**

19. Since as early as January 2, 1995, Ameriqurest has continuously advertised, promoted, marketed, offered for sale, and sold, in commerce, mortgage and financial services under or in connection with the AMERIQUEST MARKS.

20. Ameriqurest has continuously used in commerce the AMERIQUEST MARKS to advertise, market, promote, offer for sale, and sell Ameriqurest's services throughout the United States through various channels of trade, including, but not limited to, the Internet, retail stores, print media, television, radio, the telephone, direct mail, and trade shows.

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1           21. Ameriquest's actual and intended class of consumers, throughout the  
2 United States, are homeowners and prospective homeowners seeking mortgage  
3 and financial services.

4           22. Ameriquest has devoted substantial time, effort, and resources in the  
5 establishment of the good will, consumer recognition, and nationwide reputation  
6 of the AMERIQUEST MARKS.

7           23. Ameriquest has also expended significant resources to advertise its  
8 mortgage and financial services under the AMERIQUEST MARKS, throughout  
9 the United States in multiple mediums including, but not limited to, direct mail,  
10 newspapers, magazines, the Internet, live sporting events, national radio, and  
11 national television.

12           24. AMERIQUEST'S MARKS are suggestive, fanciful, or arbitrary  
13 service marks and, thus, are inherently distinctive.

14           25. The AMERIQUEST MARKS are distinctive and famous within the  
15 meaning of 15 U.S.C. §1125(c).

16           26. If the family of AMERIQUEST'S MARKS are descriptive marks,  
17 they have become distinctive in that they have acquired secondary meaning in the  
18 minds of the consuming public and individuals in the trade and they identify a  
19 single source and origin of the services offered under the AMERIQUEST  
20 MARKS.

21           27. The consuming public at large and individuals in the trade have come  
22 to know, rely upon, recognize, and associate the AMERIQUEST MARKS with  
23 Ameriquest as the single source and origin of the services rendered by Ameriquest.

24           28. Ameriquest has not abandoned any of the AMERIQUEST MARKS.

25                           **DEFENDANT'S INFRINGING MARKS**

26           29. On June 21, 2004 and July 7, 2004, Defendant filed intent-to-use  
27 applications to register with the United States Patent and Trademark Office  
28 ("USPTO") the following marks containing the term "AMERIFIRST":

EXHIBIT	SERVICE MARK:	DATE FILED:	APPLICATION NUMBER:
B	Amerifirst Finance Co.	06/21/2004	Ser. No. 76/598,428
C	Amerifirst Home Improvement Finance Co.	07/07/2004	Ser. No. 76/600,960

True and correct copies of reports for each of these applications, obtained via the Trademark Applications and Registrations Retrieval service ("TARR") available on the USPTO website, are attached hereto as **Exhibits B and C** and are incorporated herein by reference.

30. On August 18, 2005, Defendant filed with the USPTO the following two use-based applications, which claim the dates of first use, respectively, as provided below:

EXHIBIT	SERVICE MARK:	DATE FILED:	APPLICATION NUMBER:	DATE OF FIRST USE
D	Amerifirst	08/18/2005	Ser. No. 78/696/008	11/09/2004
E	Amerifirst Home Improvement Finance	08/18/2005	Ser. No. 78/696,009	09/15/2004

True and correct copies of the TARR reports for these applications are attached hereto as **Exhibits D and E** and are incorporated herein by reference.

31. All marks identified in paragraphs 29 and 30 are collectively referred to as the "INFRINGING MARKS".

### **DEFENDANT'S USE OF THE INFRINGING MARKS THROUGHOUT THE UNITED STATES**

32. Defendant advertises, markets, promotes, offers for sale, and sells financial services under one or more of the INFRINGING MARKS throughout the United States.

33. Defendant's INFRINGING MARKS and the AMERIQUEST MARKS are the same or similar in appearance, sound, and connotation.

34. Defendant's INFRINGING MARKS have a nearly identical overall commercial impression as the AMERIQUEST MARKS.

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1           35. Defendant uses one or more of the INFRINGING MARKS on or in  
2 connection with the same or similar mortgage and financial services as  
3 Ameritrust's mortgage and financial services.

4           36. Defendant offers for sale and sells its services by and through direct  
5 sales marketing through account executives as well as telemarketing professionals.

6           37. Defendant's services are also advertised and offered for sale through  
7 Defendant's attendance at trade shows in the industry.

8           38. Defendant registered the domain name "www.trustamerifirst.com" on  
9 or about June 10, 2004, which domain name resolves to an active Internet website  
10 ("Defendant's Website").

11           39. Defendant uses one or more of the INFRINGING MARKS in  
12 connection with its mortgage services; on Defendant's Website, to advertise,  
13 market, offer for sale, and/or sell its services.

14           40. Ameritrust and Defendant both advertise, offer for sale, and/or sell  
15 their services, under or in connection with their respective marks, via the same or  
16 similar channels of trade.

17           41. Ameritrust's first use of one or more of the AMERITRUST MARKS  
18 predates Defendant's use of one or more of the INFRINGING MARKS and its  
19 registration of said domain name by more than nine years.

20           42. The AMERITRUST MARKS had become distinctive and famous  
21 within the meaning of 15 U.S.C. §1125(c) prior to Defendant's registration and/or  
22 use of the domain name "www.trustamerifirst.com".

23           43. Defendant's actual and intended class of consumers throughout the  
24 United States for mortgage services offered in connection with at least one of the  
25 INFRINGING MARKS are mortgage contractors, mortgage contract dealers, and  
26 homeowners seeking mortgage and financial services.

27           44. Ameritrust and Defendant both advertise, offer for sale, and sell their  
28 services to the same or similar classes of consumers throughout the United States.

1 **FIRST CLAIM FOR RELIEF**

2 **Service Mark Infringement Pursuant to the Lanham Act §32, 15 U.S.C. §1114**

3 45. Amerquest re-alleges each and every allegation contained in  
4 paragraphs 1 through 44 as though set forth in full herein.

5 46. Defendant's use of one or more of the INFRINGING MARKS in  
6 interstate commerce, as alleged herein, is without the permission, authority, or  
7 consent of Amerquest.

8 47. One or more of the INFRINGING MARKS constitute reproductions,  
9 copies, or colorable imitations of the AMERIQUEST MARKS within the meaning  
10 of 15 U.S.C. §1114(1).

11 48. Defendant's conduct, as alleged herein, is likely to cause confusion,  
12 or to cause mistake, or to deceive the consuming public.

13 49. Defendant intended its conduct to cause confusion, or to cause  
14 mistake, or to deceive the consuming public and said conduct constitutes  
15 infringement of the AMERIQUEST MARKS.

16 50. Amerquest has suffered, and will continue to suffer, irreparable  
17 injury from Defendant's use of the INFRINGING MARKS and from its  
18 misappropriation and infringement of the AMERIQUEST MARKS, and,  
19 therefore, is entitled to relief pursuant to the Lanham Act.

20 **SECOND CLAIM FOR RELIEF**

21 **Service Mark Dilution Pursuant to the Lanham Act § 43(c), 15 U.S.C. §1125(c)**

22 51. Amerquest re-alleges each and every allegation contained in  
23 paragraphs 1 through 50 as though set forth in full herein.

24 52. Defendant uses one or more of the INFRINGING MARKS in  
25 interstate commerce for commercial purposes.

26 53. Defendant began using the INFRINGING MARKS after the  
27 AMERIQUEST MARKS became distinctive and famous within the meaning of 15  
28 U.S.C. §1125(c).

1           54. Defendant's acts have caused the dilution of, and will likely continue  
2 to dilute, the distinctive quality of the AMERIQUEST MARKS through blurring  
3 and/or tarnishing.

4           55. Defendant committed these acts willfully and with the intent to trade  
5 on the reputation of Ameriquest and to cause dilution of the famous  
6 AMERIQUEST MARKS.

7           56. Ameriquest has suffered, and will continue to suffer, dilution and  
8 irreparable injury from Defendant's use of the INFRINGING MARKS and its  
9 misappropriation and infringement of the AMERIQUEST MARKS, and,  
10 therefore, is entitled to relief pursuant to the Lanham Act.

11                           **THIRD CLAIM FOR RELIEF**

12                           *False Designation in Interstate Commerce*

13                           *Pursuant to the Lanham Act § 43(a), 15 U.S.C. § 1125(a)*

14           57. Ameriquest re-alleges each and every allegation contained in  
15 paragraphs 1 through 56 as though set forth in full herein.

16           58. Defendant has advertised, offered for sale, and sold mortgage and  
17 financial services in United States interstate commerce under or in connection with  
18 one or more of the INFRINGING MARKS, which include the term  
19 "AMERIFIRST".

20           59. Said use of the term "AMERIFIRST" is a false designation of origin,  
21 and a false or misleading description and representation of fact, which is likely to  
22 cause confusion, or to cause mistake, or to deceive the consuming public as to the  
23 origin, affiliation, sponsorship, or approval of Defendant's services by  
24 Ameriquest.

25           60. Defendant committed these acts with the intent to cause confusion, or  
26 to cause mistake, or to deceive the consuming public as to the source and origin of  
27 Defendant's services, and to trade off Ameriquest's name and the AMERIQUEST  
28 MARKS.



1           61. Ameritrust has suffered, and will continue to suffer, irreparable  
2 injury from Defendant's use of the INFRINGING MARKS and its  
3 misappropriation and infringement of the AMERITRUST MARKS, and,  
4 therefore, is entitled to relief pursuant to the Lanham Act.

5                                   **FOURTH CLAIM FOR RELIEF**

6           Violation of the Anticybersquatting Consumer Protection Act, 15 U.S.C. §1125(d)

7           62. Ameritrust re-alleges each and every allegation contained in  
8 paragraphs 1 through 61 as though set forth in full herein.

9           63. Defendant registered, traffics in or uses the domain name  
10 "www.trustameritrust.com".

11           64. Defendant registered the domain name in bad faith with an intent to  
12 profit.

13           65. One or more of the AMERITRUST MARKS were distinctive at the  
14 time of Defendant's registration of said domain name.

15           66. One or more of the AMERITRUST MARKS were famous at the time  
16 of Defendant's registration of said domain name.

17           67. Defendant's said domain name is confusingly similar to and/or  
18 dilutive of one or more of the AMERITRUST MARKS.

19           68. Ameritrust has suffered, and will continue to suffer, irreparable  
20 injury from Defendant's registration, trafficking in and use of said domain name,  
21 and, therefore, is entitled to relief pursuant to the Anticybersquatting Consumer  
22 Protection Act and 15 U.S.C. §1125(d).

23                                   **FIFTH CLAIM FOR RELIEF**

24                                   Unfair Competition

25           69. Ameritrust re-alleges each and every allegation contained in  
26 paragraphs 1 through 68 as though set forth in full herein.

27           70. Defendant committed the acts alleged herein with the intent to cause  
28 confusion, or to cause mistake, or to deceive the consuming public as to the source

1 and origin of Defendant's services, and to trade off Ameriquest's name and the  
2 AMERIQUEST MARKS.

3 71. Defendant's acts were committed with the intent to pass off and palm  
4 off Defendant's services as the services of Ameriquest, and with the intent to  
5 deceive and defraud the consuming public.

6 72. Ameriquest has suffered, and will continue to suffer, irreparable  
7 injury from Defendant's use of the INFRINGING MARKS and its  
8 misappropriation and infringement of the AMERIQUEST MARKS, and,  
9 therefore, is entitled to all equitable relief available.

10 **SIXTH CLAIM FOR RELIEF**

11 *Service Mark Infringement Pursuant to*

12 *California Business and Professions Code §14320*

13 73. Ameriquest re-alleges each and every allegation contained in  
14 paragraphs 1 through 72 as though set forth in full herein.

15 74. Defendant has advertised, offered for sale, and sold financial services  
16 in connection with the INFRINGING MARKS, which are colorable imitations of  
17 the AMERIQUEST MARKS, in interstate commerce, without the consent or  
18 authority of Ameriquest.

19 75. Defendant intended that the use of the INFRINGING MARKS in  
20 connection with the services provided by Defendant would cause confusion, or  
21 would cause mistake, or would deceive the consuming public.

22 76. Ameriquest has suffered, and will continue to suffer, irreparable  
23 injury from Defendant's use of the INFRINGING MARKS and its  
24 misappropriation and infringement of the AMERIQUEST MARKS, and,  
25 therefore, is entitled to relief pursuant to the laws of the State of California.

26 ///

27 ///

28 ///

1                                   **SEVENTH CLAIM FOR RELIEF**

2                                   *Service Mark Dilution Pursuant to*

3                                   *California Business and Professions Code §14330*

4           77.   Ameriquest re-alleges each and every allegation contained in  
5 paragraphs 1 through 76 as though set forth in full herein.

6           78.   Defendant has made commercial use of the INFRINGING MARKS  
7 in interstate commerce in connection with mortgage and financial services which  
8 has lessened the capacity of the famous AMERIQUEST MARKS to identify and  
9 distinguish the mortgage and financial services offered by Ameriquest.

10          79.   Defendant's acts, as alleged herein, are blurring and tarnishing the  
11 famous, distinctive, and well-established AMERIQUEST MARKS, so as to cause  
12 dilution.

13          80.   Defendant, as alleged herein, acted with the intent of trading off of  
14 Ameriquest and diluting the AMERIQUEST MARKS.

15          81.   Ameriquest has suffered, and will continue to suffer, dilution and  
16 irreparable injury from Defendant's use of the INFRINGING MARKS and its  
17 misappropriation and infringement of the AMERIQUEST MARKS, and,  
18 therefore, is entitled to relief pursuant to the laws of the State of California.

19                                   **EIGHTH CLAIM FOR RELIEF**

20                                   *Unfair Competition Pursuant to*

21                                   *California Business and Professions Code §17200*

22          82.   Ameriquest re-alleges each and every allegation contained in  
23 paragraphs 1 through 81 as though set forth in full herein.

24          83.   Defendant intentionally infringed the AMERIQUEST MARKS by  
25 adopting, advertising, offering for sale, and selling financial services under or in  
26 connection with the INFRINGING MARKS.

27          84.   Defendant's acts, as alleged herein, were false or misleading and  
28 intended to induce the consuming public to purchase Defendant's services based

1 on a mistaken belief as to the origin, affiliation, sponsorship, or approval of  
2 Defendant's services by Ameriquest in violation of California Business and  
3 Professions Code §17200.

4 85. Ameriquest has suffered, and will continue to suffer, irreparable  
5 injury from Defendant's use of the INFRINGING MARKS and its  
6 misappropriation and infringement of the AMERIQUEST MARKS, and,  
7 therefore, is entitled to relief pursuant to the laws of the State of California.

8 **NINTH CLAIM FOR RELIEF**

9 **False Advertising Pursuant to**

10 **California Business and Professions Code §17500**

11 86. Ameriquest re-alleges each and every allegation contained in  
12 paragraphs 1 through 85 as though set forth in full herein.

13 87. Defendant has advertised, offered for sale, and sold mortgage and  
14 financial services in United States interstate commerce under the INFRINGING  
15 MARKS, each of which include the term "AMERIFIRST".

16 88. Said use of the term "AMERIFIRST" is a false designation of origin,  
17 and a false or misleading description and representation of fact, which is likely to  
18 cause confusion, to cause mistake, or to deceive the consuming public as to the  
19 origin, affiliation, sponsorship, or approval of Defendant's services by  
20 Ameriquest.

21 89. Ameriquest has suffered, and will continue to suffer, irreparable  
22 injury from Defendant's use of the INFRINGING MARKS and its  
23 misappropriation and infringement of the AMERIQUEST MARKS, and,  
24 therefore, is entitled to relief pursuant to the laws of the State of California.

25 ///

26 ///

27 ///

28 ///

1 **PRAYER FOR RELIEF**

2 WHEREFORE, AMERIQUEST prays for judgment against DEFENDANT  
3 as follows:

4 **As to the First Claim for Relief for Infringement pursuant to the**  
5 **Lanham Act:**

- 6 1. For preliminary and permanent injunctions enjoining Defendant, its  
7 agents, servants, employees, attorneys, and all persons acting under or  
8 in active participation with Defendant: (i) from using the  
9 INFRINGING MARKS, the AMERIQUEST MARKS, any other  
10 trademark, service mark, corporate name, or trade name containing the  
11 term "Amerifirst", or any other trademark, service mark, corporate  
12 name, or trade name confusingly similar to any AMERIQUEST  
13 MARK; (ii) from infringing the AMERIQUEST MARKS; and (iii)  
14 from describing products and services as "AMERIFIRST",  
15 "AMERIFIRST FINANCE CO.", "AMERIFIRST HOME  
16 IMPROVEMENT FINANCE", "AMERIFIRST HOME  
17 IMPROVEMENT FINANCE CO";
- 18 2. For an order directing Defendant to file with the Court and serve on  
19 Ameriqurest, within thirty days after service of such injunctions, a  
20 report in writing under oath setting forth in detail the manner and form  
21 in which the Defendant has complied with injunction;
- 22 3. For an order providing for the seizure of all of Defendant's materials  
23 bearing or incorporating any INFRINGING MARK, the means of  
24 making the INFRINGING MARKS, and all records documenting the  
25 manufacture, sale, or receipt of services involved in the infringement  
26 of the AMERIQUEST MARKS;
- 27 4. For Defendant's profits in an amount to be determined at trial;
- 28

1           5.     For trebling of Defendant's profits pursuant to 15 U.S.C. §1117(b);  
2                 and

3           6.     For such other relief as the court deems just and proper.

4           **As for the Second and Third Claims for Relief for Dilution and False**  
5 **Designation in Interstate Commerce under the Lanham Act:**

6           1.     For such injunctive relief as defined and prayed for herein under the  
7                 First Claim for Relief;

8           2.     For defendant's profits in an amount to be determined at trial;

9           3.     For an order for delivery and/or destruction of all of Defendant's  
10                materials bearing any INFRINGING MARK, including but not limited  
11                to, advertising and promotional materials, signs, literature, labels,  
12                letterhead, packing, websites, and domain names for violating 15  
13                U.S.C. §1125(a) and willful violation of 15 U.S.C. §1125(c); and

14          4.     For such other relief as the court deems just and proper.

15          **As for the Fourth Claim for Relief for Violation of the**  
16 **Anticybersquatting Consumer Protection Act:**

17          1.     For such injunctive relief as defined and prayed for herein under the  
18                 First Claim for Relief;

19          2.     For transfer to Amerquest of the infringing domain name, or in the  
20                 alternative, cancellation or forfeiture of the infringing domain name;

21          3.     For defendant's profits in an amount to be determined at trial;

22          4.     At Amerquest's election, for the maximum statutory damages of  
23                 \$100,000 per domain name, pursuant to 15 U.S.C. §1117(d); and

24          5.     For such other relief as the court deems just and proper.

25          **As to the Fifth Claim for Relief for Unfair Competition under Common**  
26 **Law:**

27          1.     For such injunctive relief as defined and prayed for herein under the  
28                 First Claim for Relief, pursuant to the laws of equity; and

1           2.     For such other relief as the court deems just and proper.

2           **As for the Sixth and Seventh Claims for Relief for Infringement and for**  
3 **Dilution under California Law:**

4           1.     For such injunctive relief as defined and prayed for herein under the  
5                 First Claim for Relief, pursuant to the laws of equity;

6           2.     For an order for delivery and destruction of all of Defendant's  
7                 materials bearing any INFRINGING MARK, including but not limited  
8                 to, advertising and promotional materials, signs, literature, labels,  
9                 letterhead, packing, websites, and domain names;

10          3.     For trebling of Defendant's profits in an amount to be determined at  
11                 trial; and

12          4.     For such other relief as the court deems just and proper.

13           **As for the Eighth and Ninth Claims for Unfair Business Practices and**  
14 **False Advertising under California Law:**

15          1.     For such injunctive relief as defined and prayed for herein under the  
16                 First Claim for Relief, pursuant to the laws of equity;

17          2.     Restitution and disgorgement of Defendant's ill-gotten profits; and

18          3.     For such other relief as the court deems just and proper.

19           **As to All Causes of Action:**

20          1.     For attorneys fees and costs of suit incurred herein;

21          2.     For pre-judgment and post-judgment interest; and

22          3.     For such other and further relief as the Court deems just and proper.

23   DATED: September 6, 2006

BUCHALTER NEMER  
A Professional Corporation

By: 

MICHAEL L. WACHTELL  
Attorneys for Plaintiff  
AMERIQUEST MORTGAGE  
COMPANY

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**DEMAND FOR A JURY TRIAL**

Pursuant to F.R.C.P. 38(b), Ameriquest Mortgage Company hereby demands  
a trial by jury in this action of any issues triable by jury.

DATED: September 6, 2006

BUCHALTER NEMER  
A Professional Corporation

By: 

MICHAEL L. WACHTELL  
Attorneys for Plaintiff  
AMERIQUEST MORTGAGE  
COMPANY

BN 971270v1





# Commonwealth of Virginia



## State Corporation Commission

*I Certify the Following from the Records of the Commission:*

The foregoing is a true copy of the certificate of amendment of AmeriFirst Home Improvement Finance Co. issued August 11, 2004.

Nothing more is hereby certified.



*Signed and Sealed at Richmond on this Date:  
August 30, 2006*

*Joel H. Peck*  
\_\_\_\_\_  
Joel H. Peck, Clerk of the Commission

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION

AT RICHMOND, AUGUST 11, 2004

The State Corporation Commission has found the accompanying articles submitted on behalf of  
AmeriFirst Home Improvement Finance Co. (formerly KENWOOD  
ASSOCIATES, INC. )

to comply with the requirements of law, and confirms payment of all required fees. Therefore, it  
is ORDERED that this

**CERTIFICATE OF AMENDMENT**

be issued and admitted to record with the articles of amendment in the Office of the Clerk of the  
Commission, effective August 11, 2004.

The corporation is granted the authority conferred on it by law in accordance with the articles,  
subject to the conditions and restrictions imposed by law.

STATE CORPORATION COMMISSION

By

A handwritten signature in black ink, appearing to read "Mark L. Christie", written over a horizontal line.

Commissioner



SCC710N  
(06/02)

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION

ARTICLES OF AMENDMENT

CHANGING THE NAME OF A CORPORATION  
By Unanimous Consent of the Shareholders

The undersigned, pursuant to § 13.1-710 of the Code of Virginia, executes these articles and states as follows:

ONE

The name of the corporation is Kenwood Associates, Inc.

TWO

The name of the corporation is changed to AmeriFirst Home  
Improvement Finance Co.

THREE

The foregoing amendment was adopted by unanimous consent of the  
shareholders on July 14, 2004  
(date)

The undersigned declares that the facts herein stated are true as of

\_\_\_\_\_  
(date)

Kenwood Associates, Inc.  
(Name of corporation)

By: Thomas Hewitt  
(Signature)

Thomas Hewitt, President  
(Printed name and corporate title)

See instructions on the reverse.



Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2006-08-25 11:04:43 ET

Serial Number: 76598428 Assignment Information

Registration Number: (NOT AVAILABLE)

Mark

# AMERIFIRST FINANCE CO.

(words only): AMERIFIRST FINANCE CO.

Standard Character claim: Yes

Current Status: An opposition is now pending at the Trademark Trial and Appeal Board.

Date of Status: 2005-09-08

Filing Date: 2004-06-21

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 117

Attorney Assigned:  
POWELL LINDA A Employee Location

Current Location: 650 -Publication And Issue Section

Date In Location: 2005-03-16

---

## LAST APPLICANT(S)/OWNER(S) OF RECORD

---

1. Kenwood Associates, Inc.

**Address:**

Kenwood Associates, Inc.  
4041 Powder Mill Road, Suite 204  
Calverton, MD 20705  
United States

Legal Entity Type: Corporation  
State or Country of Incorporation: Virginia

Phone Number: 301.595.1991

---

**GOODS AND/OR SERVICES**

---

**International Class:** 036

**Class Status:** Active

Financial services, namely, purchaser of consumer credit contracts for home improvement services

**Basis:** 1(b)

**First Use Date:** (DATE NOT AVAILABLE)

**First Use in Commerce Date:** (DATE NOT AVAILABLE)

---

**ADDITIONAL INFORMATION**

---

**Disclaimer:** "FINANCE CO."

---

**MADRID PROTOCOL INFORMATION**

---

(NOT AVAILABLE)

---

**PROSECUTION HISTORY**

---

2005-09-08 - Opposition instituted for Proceeding

2005-08-18 - Attorney Revoked And/Or Appointed

2005-08-18 - TEAS Revoke/Appoint Attorney Received

2005-05-26 - Extension Of Time To Oppose Received

2005-04-26 - Published for opposition

2005-04-06 - Notice of publication

2005-02-08 - Law Office Publication Review Completed

2005-02-07 - Assigned To LIE

2005-02-07 - Assigned To LIE

2005-01-31 - TEAS Change Of Correspondence Received

2005-01-28 - Assigned To LIE

2005-01-27 - Examiner's amendment mailed

2005-01-26 - Approved for Pub - Principal Register (Initial exam)

2005-01-26 - Examiners Amendment -Written

2005-01-24 - Assigned To Examiner

2004-07-07 - New Application Entered In Tram

---

**CORRESPONDENCE INFORMATION**

---

**Correspondent**

Matthew H. Swyers (Attorney of record)

MATTHEW H. SWYERS  
THE SWYERS LAW FIRM  
344 MAPLE AVENUE WEST, SUITE 389  
VIENNA, VA 22180

**Phone Number:** (703) 585-2077

**Fax Number:** (270) 477-4574

---





Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2006-08-29 17:32:23 ET

Serial Number: 76600960 Assignment Information

Registration Number: (NOT AVAILABLE)

Mark

# AMERIFIRST HOME IMPROVEMENT FINANCE

(words only): AMERIFIRST HOME IMPROVEMENT FINANCE CO.

Standard Character claim: Yes

Current Status: An opposition is now pending at the Trademark Trial and Appeal Board.

Date of Status: 2005-09-08

Filing Date: 2004-07-07

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 117

Attorney Assigned:  
POWELL LINDA A Employee Location

Current Location: 650 -Publication And Issue Section

Date In Location: 2005-03-16

---

## LAST APPLICANT(S)/OWNER(S) OF RECORD

---

1. Kenwood Associates, Inc.

**Address:**

Kenwood Associates, Inc.  
4041 Powder Mill Road, Suite 204  
Calverton, MD 20705  
United States

**Legal Entity Type:** Corporation

**State or Country of Incorporation:** Virginia  
**Phone Number:** 301.595.1991

---

**GOODS AND/OR SERVICES**

---

**International Class:** 036

**Class Status:** Active

Financial services, namely, purchaser of consumer credit contracts for home improvement services

**Basis:** 1(b)

**First Use Date:** (DATE NOT AVAILABLE)

**First Use in Commerce Date:** (DATE NOT AVAILABLE)

---

**ADDITIONAL INFORMATION**

---

**Disclaimer:** "HOME IMPROVEMENT FINANCE CO."

---

**MADRID PROTOCOL INFORMATION**

---

(NOT AVAILABLE)

---

**PROSECUTION HISTORY**

---

2005-09-08 - Opposition instituted for Proceeding

2005-08-18 - Attorney Revoked And/Or Appointed

2005-08-18 - TEAS Revoke/Appoint Attorney Received

2005-05-26 - Extension Of Time To Oppose Received

2005-04-26 - Published for opposition

2005-04-06 - Notice of publication

2005-02-08 - Law Office Publication Review Completed

2005-02-07 - Assigned To LIE

2005-02-07 - Assigned To LIE

2005-01-31 - TEAS Change Of Correspondence Received

2005-01-28 - Assigned To LIE

2005-01-27 - Examiner's amendment mailed

2005-01-26 - Approved for Pub - Principal Register (Initial exam)

2005-01-26 - Examiners Amendment -Written

2005-01-26 - Assigned To Examiner

2004-07-16 - New Application Entered In Tram

---

**CORRESPONDENCE INFORMATION**

---

**Correspondent**

Matthew H. Swyers (Attorney of record)

MATTHEW H. SWYERS  
THE SWYERS LAW FIRM  
344 MAPLE AVENUE WEST, SUITE 389  
VIENNA, VA 22180

**Phone Number:** (703) 585-2077

**Fax Number:** (270) 477-4574

---



Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2006-08-25 11:05:26 ET

Serial Number: 78696008 Assignment Information

—Registration Number: (NOT AVAILABLE)

Mark

# AMERIFIRST

(words only): AMERIFIRST

Standard Character claim: Yes

Current Status: An opposition is now pending at the Trademark Trial and Appeal Board.

Date of Status: 2006-08-15

Filing Date: 2005-08-18

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 109

Attorney Assigned:  
SAUNDERS ANDREA D Employee Location

Current Location: 650 -Publication And Issue Section

Date In Location: 2006-06-09

---

## LAST APPLICANT(S)/OWNER(S) OF RECORD

---

1. AmeriFirst Home Improvement Finance Co.

Address:  
AmeriFirst Home Improvement Finance Co.  
4041 Powder Mill Road, Suite 204

Calverton, MD 20705  
United States  
**Legal Entity Type:** Corporation  
**State or Country of Incorporation:** Virginia

---

**GOODS AND/OR SERVICES**

---

**International Class:** 036

**Class Status:** Active

Mortgage banking services, namely, origination, acquisition, servicing, securitization and brokerage of mortgage loans; Mortgage banking; Mortgage brokerage; Mortgage lending

**Basis:** 1(a)

**First Use Date:** 2004-11-09

**First Use in Commerce Date:** 2004-11-09

---

**ADDITIONAL INFORMATION**

---

(NOT AVAILABLE)

---

**MADRID PROTOCOL INFORMATION**

---

(NOT AVAILABLE)

---

**PROSECUTION HISTORY**

---

2006-08-15 - Opposition instituted for Proceeding

2006-08-15 - Opposition papers filed

2006-07-18 - Published for opposition

2006-06-28 - Notice of publication

2006-06-01 - Law Office Publication Review Completed

2006-05-19 - Assigned To LIE

2006-05-10 - Approved for Pub - Principal Register (Initial exam)

2006-04-13 - Teas/Email Correspondence Entered

2006-04-04 - Communication received from applicant

2006-04-04 - TEAS Response to Office Action Received

2006-03-06 - NON-FINAL ACTION E-MAILED

2006-03-06 - Non-Final Action Written

2006-03-06 - Non-final action e-mailed

2006-03-06 - Non-Final Action Written

2006-03-06 - Assigned To Examiner

---

2005-09-19 - Applicant amendment prior to exam entered

2005-09-19 - TEAS Preliminary Amendment Received

2005-08-26 - New Application Entered In Tram

---

**CORRESPONDENCE INFORMATION**

---

**Correspondent**

Matthew H. Swyers, Esq. (Attorney of record)

MATTHEW H. SWYERS, ESQ.  
THE SWYERS LAW FIRM  
344 MAPLE AVENUE WEST, SUITE 389  
VIENNA, VA 22180

**Phone Number:** (703) 585-2077

**Fax Number:** (270) 477-4574

---





Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2006-08-29 17:34:30 ET

Serial Number: 78696009 Assignment Information

Registration Number: (NOT AVAILABLE)

Mark

## AMERIFIRST HOME IMPROVEMENT FINANCE

(words only): AMERIFIRST HOME IMPROVEMENT FINANCE

Standard Character claim: Yes

Current Status: An opposition is now pending at the Trademark Trial and Appeal Board.

Date of Status: 2006-08-15

Filing Date: 2005-08-18

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 109

Attorney Assigned:  
SAUNDERS ANDREA D Employee Location

Current Location: 650 -Publication And Issue Section

Date In Location: 2006-06-09

---

### LAST APPLICANT(S)/OWNER(S) OF RECORD

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1. AmeriFirst Home Improvement Finance Co.

Address:  
AmeriFirst Home Improvement Finance Co.  
4041 Powder Mill Road, Suite 204

Calverton, MD 20705

United States

**Legal Entity Type:** Corporation

**State or Country of Incorporation:** Virginia

---

### GOODS AND/OR SERVICES

---

**International Class:** 036

**Class Status:** Active

Mortgage banking services, namely, origination, acquisition, servicing, securitization and brokerage of mortgage loans; Mortgage banking; Mortgage brokerage; Mortgage lending

**Basis:** 1(a)

**First Use Date:** 2004-09-15

**First Use in Commerce Date:** 2004-09-15

---

### ADDITIONAL INFORMATION

---

**Disclaimer:** "HOME IMPROVEMENT FINANCE"

---

### MADRID PROTOCOL INFORMATION

---

(NOT AVAILABLE)

---

### PROSECUTION HISTORY

---

2006-08-15 - Opposition instituted for Proceeding

2006-08-15 - Opposition papers filed

2006-07-18 - Published for opposition

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2006-06-01 - Law Office Publication Review Completed

2006-05-19 - Assigned To LIE

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2006-04-04 - Communication received from applicant

2006-04-04 - TEAS Response to Office Action Received

2006-03-06 - Non-final action e-mailed

2006-03-06 - Non-Final Action Written

2006-03-06 - Assigned To Examiner

2005-09-19 - Applicant amendment prior to exam entered

2005-09-19 - TEAS Preliminary Amendment Received

2005-08-26 - New Application Entered In Tram

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**CORRESPONDENCE INFORMATION**

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**Correspondent**

Matthew H. Swyers, Esq. (Attorney of record)

MATTHEW H. SWYERS, ESQ.  
THE SWYERS LAW FIRM  
344 MAPLE AVENUE WEST, SUITE 389  
VIENNA, VA 22180

**Phone Number:** (703) 585-2077

**Fax Number:** (270) 477-4574

---

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Application Serial Nos. 78/696,008 and 78/696,009  
For the Marks: **AMERIFIRST** and **AMERIFIRST HOME IMPROVEMENT  
FINANCE**

Ameriquest Mortgage Company	)	
a Delaware corporation	)	
	)	
	)	
vs.	)	
	)	
AmeriFirst Home Improvement Finance Co.	)	
a Virginia corporation	)	
	)	
Applicant.	)	
	)	

Opposition No. 91172349

**CERTIFICATE OF SERVICE**

This is to certify that I have this 17th day of October 2006, served Opposer's  
**Motion with Consent to Suspend Opposition for Civil Action**, by causing a true and  
correct copy thereof to be deposited in the United States First class mail, postage prepaid,  
addressed to Applicant's counsel of record as follows:

Matthew H. Swyers, Esq.  
The Swyers Law Firm  
344 Maple Avenue West, Suite 389  
Vienna, VA 22180

  
\_\_\_\_\_  
Loretta Arias